



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

MEETING MINUTES KAKAAKO PUBLIC INFRASTRUCTURE AND FACILITIES WORKING GROUP

THURSDAY, NOVEMBER 12, 2015
COUNCIL COMMITTEE MEETING ROOM
2nd FLOOR
HONOLULU HALE
3:30 p.m.

MEMBERS PRESENT

Co-Chair Carol Fukunaga, City Council
Co-Chair Suzanne Chun Oakland, State Senate
Co-Chair Ryan Yamane, State House of Representatives
Leo Asuncion, Jr., Office of Planning
George Atta, Department of Planning and Permitting
Michael Formby, Department of Transportation Services
Russell Tsuji, Department of Land and Natural Resources
Deepak Neupane, Hawaii Community Development Authority
Jennifer Waihee-Polk, Department of Corporation Counsel
Mike Wong, Department of the Attorney General
Roy Bumgarner, Imperial Plaza
Aaron Landry, Ala Moana-Kakaako Neighborhood Board #11
Michael MacDonald, MacDonald & Porter, Inc. (for Steve Scott, Scott Hawaii)

MEMBERS ABSENT

Ross Sasamura, Department of Facility Maintenance

OTHERS PRESENT

Facilitator Thomas J. Mitrano, Mediation Center of the Pacific, Access ADR program
Dr. Barbara Polk, Mediation Center of the Pacific, Access ADR program

CALL TO ORDER

The meeting of the Kakaako Public Infrastructure and Facilities Working Group ("Working Group") was called to order by the co-chairs at 3:35 p.m.

APPROVAL OF MEETING MINUTES

The minutes of the Wednesday, October 14, 2015 Working Group meeting were approved, with one correction. The date of the next meeting was corrected to Thursday, November 12, 2015.

DISCUSSION

The Working Group discussed a list of questions and proposed responses (see attachment, revised October 23, 2015) that were developed based on discussions during the previous Working Group meeting, which were organized based on the following three categories: 1) Clarification of existing ownership of private roads in central Kakaako area; 2) Identification of issues impacting maintenance, operations, and planning for private roads under current ownership situations; and 3) Identification of options for City and County and/or State of Hawaii

to acquire private roads, or pursue other alternatives to provide safe roadways and infrastructure in Kakaako. The facilitator explained that material submitted to the Working Group was available online in the Docushare library on the City Council's website.

1. CLARIFICATION OF EXISTING OWNERSHIP OF PRIVATE ROADS IN CENTRAL KAKAAKO AREA

The Working Group briefly discussed various laws and policies relating to the ownership, and the ownership transfer, of private roads. The designee from the Department of the Corporation Counsel ("COR") provided further explanation regarding material submitted. Discussion ensued regarding commercial activities and City taxation. The designee from the Department of Land and Natural Resources provided further explanation regarding material submitted, noting the history of confusion surrounding the private road issue. The co-chairs provided further explanation regarding material submitted, relating to the legislative perspective.

2. IDENTIFICATION OF ISSUES IMPACTING MAINTENANCE, OPERATIONS, AND PLANNING FOR PRIVATE ROADS UNDER CURRENT OWNERSHIP SITUATIONS

The designee from the Hawaii Community Development Authority ("HCDA") provided further explanation regarding material submitted: an updated map based on Hawaii Community Development Authority records. Discussion ensued regarding the ownership of various Kakaako roads, and HCDA's policy regarding development applications. The designees representing local businesses and residents provided further explanation regarding materials submitted, relating to the Working Group's prioritization of streets; and the current parking situation in the Kakaako area. Discussion ensued regarding the lack of public parking in the Kakaako area, and the inconsistency regarding the amount of money private landowners were charging for Kakaako area parking. The designees from COR and the Department of Planning and Permitting ("DPP") provided further explanation regarding materials submitted relating to City ordinances governing road maintenance and the dedication of roads.

3. IDENTIFICATION OF OPTIONS FOR CITY AND/OR STATE TO ACQUIRE PRIVATE ROADS, OR PURSUE OTHER ALTERNATIVES

The designee from DPP provided further information regarding material submitted, relating to the usual method in which the City receives roads. The designee from DPP noted that dedication is the most common method, but added that the City usually requires that the roads meet certain standards. Dedication via the subdivision process was discussed. The designees from COR and DPP explained that although the City does not generally take roads through condemnation or acquire roads through purchase, both can occur under specific circumstances. The designees from COR and DPP further clarified the difference between issues relating to ownership, and issues relating to access.

4. NEED FOR ADDITIONAL INFORMATION, IF ANY

The Working Group discussed a need for further information prior to moving forward with the discussion of recommendations. Working Group members raised questions regarding a pending civil lawsuit relating to private roads. The co-chairs clarified that the intention of the Working Group was not to resolve any ownership issues, or to intervene in any pending lawsuits.

Discussion ensued regarding: circumstances in which City services are provided on private roads; the limited public parking in the Kakaako area; pedestrian safety along unimproved sidewalks in the Kakaako area; ordinances and statutes that are applicable to private roads; the difference between private roads (roads owned by a private entity, not belonging to a government entity) and roads in limbo (roads owned by a government entity, but a jurisdictional

dispute between the City and State exists); and HCDA's policy regarding improvement district projects. It was determined that the following questions likely required additional information:

- In an ownership transfer of a road parcel, can a landowner dedicate the travel lane portion of the road and retain ownership of the remainder of the right of way?
- Is a road taxed differently when there are commercial activities occurring (i.e. a private landowner charging for parking), compared to when there are no commercial activities occurring (i.e. free, public parking on a private road)?
- When does an access become a prescriptive easement (i.e. the right to use the property of another, acquired by continued use without permission of the private landowner for a prescribed period of time)?
- How do DFM and ENV decide whether or not to provide services (trash pickup, road repaving, etc.) on a private road?
- How do HPD and DTS decide whether or not to enforce regulations (traffic violations, homeless issues, etc.) on a private road?
- Do any other private landowners alienate the interest (i.e. alienate a portion of the road, from property line to property line, and claim ownership of only part of the property)?

5. DISCUSSION OF RECOMMENDATIONS AND NEXT STEPS

A designee representing a local business distributed material, which included a list of proposed recommendations relating to the City enforcement of ordinance violations. The facilitator announced that the next meeting would predominately be a discussion of proposed recommendations. The co-chairs encouraged Working Group members to research and submit any information relating to questions raised during the meeting, for the purposes of assisting in the development of more accurate proposed recommendations. The co-chairs further encouraged Working Group members to work collaboratively with other appropriate departments/Working Group members, and each respectively return to the next meeting with one to two proposed recommendations for discussion.

ANNOUNCEMENTS AND PUBLIC COMMENTS

There were no announcements or public comments offered.

NEXT MEETING

The next meeting is scheduled for Friday, December 11, 2015, at 2:30 p.m. (Council Committee Meeting Room, 2nd Floor, Honolulu Hale).

ADJOURNMENT

The meeting was adjourned by the co-chairs at 5:33 p.m.

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Identification of Questions and Issues
(10/14/15 KPIF Working Group Meeting • Revised 10/23/15)

Clarify existing ownership of private roads in central Kakaako area

1. Will the Working Group's recommendations impact the ongoing court cases?
 - *Proposed Action: State - AG/DLNR for background information on road issues from Deputy AG*
2. What is the legal status of private roads? What is the law regarding streets that do not have posted signs designating them as private? If no signs designating roads as private have been posted, what is the law regarding ownership after a designated period of years have passed (i.e. adverse possession, etc.)?
 - *Proposed Responses: State - AG/DLNR, City - Corp. Counsel/DTS?*
3. Have private street "owners" been paying taxes? Are taxes required on privately owned roads?
 - *Proposed Responses: City - Corp. Counsel (Dept. of Budget & Fiscal Services)?*
4. What actions have the State or Counties taken in other private road ownership situations/disputes (i.e. road surrender, no entity claiming ownership of road, etc.)?
 - *Proposed Responses: State - AG/DLNR, City - Corp. Counsel/DTS?*
5. Would the Legislature/County Council need to take any affirmative action to address private road ownership disputes?
 - *Proposed Responses: State Legislature, City Council?*

Identify issues impacting maintenance, operations, and planning for private roads under current ownership situations

6. Who owns the surrounding streets on Map D-2 (from October 14, 2015 handout - County Division of Land Survey and Acquisition Map) and how is HCDA involved? Can Map D-2 be updated to reflect existing conditions as of October 2015? What is the historical timeline involving ownership changes in central Kakaako?
 - *Proposed Actions: State - HCDA/OSP, City - Corp. Counsel (Dept. of Design & Construction), Scott Hawaii for historical timeline.*
7. Which private roads should receive the Working Group's highest priority?
 - *Proposed Responses: Ala Moana NB #11, representatives of Kakaako residents and businesses with entrances/exits fronting private roads?*
8. What is the current situation regarding parking on private roads in Kakaako? Which ones have parking restrictions? How much are businesses and/or drivers charged?
 - *Proposed Responses: Ala Moana NB #11, representatives of Kakaako residents and businesses with entrances/exits fronting private roads?*
9. What is the best way to restore maintenance to the private roads whose maintenance currently has been halted?
 - *Proposed Responses: City - Corp Counsel (Dept. of Facility Maintenance)?*
10. Can a private road owner dedicate only the paved portion of the road to the public, and reserve the road right of way for private purpose? Can a person who dedicates a roadway to the public only dedicate the paved portion?
 - *Proposed Responses: State - AG/DLNR, City - Corp. Counsel, DTS?*

Identify options for City & County and/or State of Hawaii to acquire private roads or pursue other alternatives to provide safe roadways and infrastructure in Kakaako

11. What are the exact limitations on Honolulu city government's ability to plan for areas along private roads, or to upgrade them or utilities within their rights of way, if desired?
 - *Proposed Responses: City - Corp. Counsel, DTS (other agencies as appropriate)?*
12. How can private roads become public roads? What's the procedure? What is the cost? Which entity pays?
 - *Proposed Responses: State - AG/DLNR, City - Corp. Counsel/DTS?*